

Order

Michigan Supreme Court
Lansing, Michigan

June 2, 2023

Elizabeth T. Clement,
Chief Justice

163567

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

PATRICIA BATISTA, DAVID BRITTEN,
TIMOTHY DONAHUE, AARON GAFFNEY,
JOHN HEWITT, RONALD KOEHLER,
AMY SWANTEK, CHRIS THOMSON, and
MICHIGAN ASSOCIATION OF
SUPERINTENDENTS AND
ADMINISTRATORS,
Plaintiffs-Appellees,

v

SC: 163567
COA: 353832
Ct of Claims: 19-000019-MZ

OFFICE OF RETIREMENT SERVICES,
MICHIGAN PUBLIC SCHOOL
EMPLOYEES RETIREMENT SYSTEM,
MICHIGAN PUBLIC EMPLOYEES
RETIREMENT SYSTEM BOARD, PUBLIC
SCHOOL EMPLOYEES RETIREMENT
SYSTEM BOARD MEMBERS, and
EXECUTIVE DIRECTOR OF RETIREMENT
SERVICES,
Defendants-Appellants.

On April 5, 2023, the Court heard oral argument on the application for leave to appeal the August 12, 2021 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(H)(1). In lieu of granting leave to appeal, we AFFIRM in part, VACATE in part, and REVERSE in part the judgment of the Court of Appeals, and we REMAND this case to that court for further consideration.

We AFFIRM the Court of Appeals' holding that the Office of Retirement Services (ORS) lacks the authority to create and implement its own normal salary increase schedules. As aptly explained by the Court of Appeals, nothing in the Michigan Public School Employees Retirement Act (the Retirement Act), MCL 38.1301 *et seq.*, explicitly or implicitly grants ORS this authority. However, we do not address whether the phrase "normal salary schedule" in MCL 38.1303a(3)(f) refers *only* to a provision contained in a collective-bargaining agreement. To the extent the Court of Appeals' holding that ORS

lacks the authority to create and implement its own normal salary increase schedules was based on such a conclusion, we VACATE that part of its opinion. The Court of Appeals should consider this issue on remand if necessary to resolve this appeal.

We REVERSE the Court of Appeals' holding that MCL 38.1303a(3)(f) does not govern public school employees who work pursuant to personal employment contracts rather than collective bargaining agreements. The Retirement Act provides that a "member" in certain circumstances is entitled to a retirement allowance, MCL 38.1381, and defines "member" to include most public school employees, MCL 38.1305(1). The Retirement Act does not exclude public school employees who work pursuant to personal employment contracts from being members. *Id.* Moreover, MCL 38.1303a(1) explains that "[e]xcept as otherwise provided in this act, 'compensation' means the remuneration earned by a *member* for service performed as a public school employee." (Emphasis added.) Subsections (2) and (3) then provide a list of items that do and do not constitute "compensation" for the purpose of determining a member's retirement allowance. As recognized by the Court of Appeals, there is no indication that MCL 38.1303a does not generally apply to all members. However, the Court of Appeals erred by holding that MCL 38.1303a(3)(f) uniquely applies only to the subset of members who work pursuant to collective bargaining agreements. Nothing in MCL 38.1303a(3)(f) makes such a distinction.

We REMAND this case to the Court of Appeals to address how MCL 38.1303a(3)(f) applies to public school employees who do not work pursuant to collective bargaining agreements and to further address how this holding affects plaintiffs' claims in this case. In its discretion, the Court of Appeals may also address plaintiffs' other preserved claims and any other issue that is necessary to resolve this appeal.

We do not retain jurisdiction.



t0531

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 2, 2023

Clerk